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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JOHN G., a Person Coming Under the  
Juvenile Court Law.

B218625  
(Los Angeles County  
Super. Ct. No. CK56093)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SEAN G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Anthony Trendacosta, Juvenile Court Referee. Affirmed

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, Los Angeles County Counsel, James M. Owens, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel for Plaintiff and Respondent.

## I. INTRODUCTION

Sean G., the father of John G., appeals from an order terminating his parental rights. (Welf. & Inst. Code, § 366.26.) We affirm the order.

## II. BACKGROUND

John G. has been a dependent of the juvenile court since August 16, 2004, when he was four years and nine months of age. The father's parental rights were terminated on July 22, 2009, when John was ten. For the five years from detention to parental rights termination, John lived with his paternal uncle and his uncle's wife—Darren and Lynn G.—the prospective adoptive parents. The juvenile court at one point summarized the proceedings noting, “Over the [more than] four years that this case has been pending there have been approximately 37 attorneys retained or appointed, at least four bench officers and numerous therapists, counselors [and social workers].”

During the first four years of John's life, from 1999 to 2004, he lived with his mother, his older half-sister, Chelsea H., and, for some period of time, the father. Beginning in 1998, even before John was born, and continuing to 2004, the mother, and later the father, had been the subject of repeated referrals to the Department of Children and Family Services (department). The father suffered from untreated bipolar disorder. He was angry, violent and destructive. In 2000, the children were discovered to be living in a filthy, cockroach infested home; the mother was depressed and overwhelmed; the father had punched holes in the apartment doors; the children were unsupervised; and the parents frequently yelled at each other. In 2003 and 2004, there were repeated reports of continuous domestic violence between the parents; the father drank and became very violent; the mother left the father, but then returned to him. John had been repeatedly physically assaulted by his half-sister and was afraid of her.

Four-year-old John and nine-year-old Chelsea were detained on August 16, 2004. John was placed with his paternal uncle and his wife. The juvenile court found the

children were at risk because they had been exposed to ongoing domestic violence between John's mother and father. Further, the mother allowed the children to reside in a home where they were exposed to extreme domestic violence between a known felon and his elderly father, both of whom were also residing there. When the children were detained, the mother was attempting to end her relationship with the father, who was not living with them. Because the father had made threatening telephone calls and had shown up at the mother and children's residence making demands, there was a stay-away order in effect as to the father.

Following his detention, John displayed emotional, behavioral and academic problems indicative of post traumatic stress disorder. He was very depressed. He was afraid of his father's anger. He was worried his father would hurt his mother. Following visits with his parents, John's behavior regressed. He threw tantrums, became physically aggressive, and experienced enuresis and encopresis. His behavior following visitation deteriorated to such an extent that his caretakers, a therapist, and the department all eventually requested that visitation with the parents be terminated. In March 2007, the juvenile court suspended parental visitation. With increased therapy, medication and reduced visitation, John's behavior improved. He functioned well as long as his routine was maintained, but he had tantrums when court-related issues came up.

The father, who received reunification services for 49 months, at no time demonstrated an ability to meet his son's needs. Although the father complied with his court ordered case plan, he refused from the outset to accept responsibility for the events that precipitated the children's detention. His behavior, including in John's presence, was often agitated, angry, erratic, inappropriate and threatening. In November 2006, the father was involved in an altercation during which he was shot three times. At the hospital, he tested positive for alcohol and marijuana. At one point, the father threatened to burn down the paternal uncle's house. In January 2009, a department social worker reported that the father had been behaving in a manner causing concern to all involved; he was at times irrational, easily agitated and unnecessarily hostile and argumentative;

there were noticeable shifts in his demeanor. The department was concerned that the father had unaddressed mental health needs.

There was a great deal of tension between the parents and maternal relatives on one hand and John's caregivers on the other, and the situation became highly polarized. In June 2007, the juvenile court appointed Dr. Michael Dishon to conduct an Evidence Code section 730 evaluation of the family—the mother, father, and half-sibling, the maternal grandparents and a maternal aunt. The father attended one session with Dr. Dishon, during which he objected to many of the things he was asked to do, and was unable to participate in a meaningful way. The father never returned for further sessions and never completed the tasks necessary to the evaluation.

In the five years between John's detention in August 2004, and the termination of the father's parental rights, on July 22, 2009, the father's visitation with John was inconsistent. The father admitted there were times when he dropped out from visiting. In the six months from August 2006 to January 2007, the father only visited John about five times, including once in October and once in November. Visitation briefly moved from monitored to unmonitored early on, but the parents' behavior coupled with John's negative reaction caused the juvenile court to order monitored visitation in a therapeutic setting. As noted above, in March 2007, the juvenile court suspended parental visitation. In January 2008, the juvenile court ordered visitation between John and the father reinstated, provided it took place in a therapeutic setting. In June 2008, a department social worker advised the father he was allowed monitored visitation with John so long as he was complying with court ordered counseling.<sup>1</sup> The father resisted, saying he was done with letting the department tell him what to do. On June 17, 2008, John had a visit with his father, which he enjoyed; he requested more visits with his father. The juvenile court ordered once a week visitation to be set up through the social worker. The father, however, did not contact the social worker to arrange visitation for two months, until

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<sup>1</sup> This is consistent with the June 17, 2008 clerk's minutes. But on the record the juvenile court said only: "[Father] will have [visitation] as long as John is in agreement, monitored visits as long as [the father] shows up."

September 18, 2008. Father and son saw each other again on October 3, 2008. They were mutually happy to see each other. Afterwards, John asked to see his father again, but he only wanted to visit him once a month or so. At the time of the 366.26 hearing, the father's visitation remained monitored. Throughout the dependency proceedings, John's behavior regressed after visits with his parents. John never expressed a desire to live with his father.

Beginning in October 2006, two years after he was detained, John consistently and repeatedly expressed his desire to live with his aunt and uncle and to be adopted by them. He began to resist visitation with family members. He had conflicted feelings. Although he enjoyed the family visits he wanted fewer of them. In February 2007, John refused to attend a planned visit with his father. He told his therapist he wanted the visits to stop. He said the court did not care about him or it would not make him see his dad. John's then therapist, Barbara Spear, testified, "I think he has a difficult relationship with his father and I think he's scared of his father." By April 2008, John was receiving weekly individual counseling as well as psychiatric care. He requested reduced visitation with family members. In June 2008, John's therapist, Monica Alvarez-Rittmaster, reported that John frequently worried about the possibility that the judge would require him to leave his aunt and uncle's home. He would become anxious anytime a court date was approaching; he worried he was going to be removed from his aunt and uncle's care. On June 13, 2008, John wrote a letter to the juvenile court: "Dear Judge [Tony]: [¶] I am happy at my aunt and uncle's house. I don't want to leave them. I want them to adopt me. It is good living there. We have a really big garden and tons of lizards in the garden. I know you like the teddy bears on your desk. Sometimes court dates are a little frustrating for me because I don't know what will happen. [¶] Sincerely, [¶] John [G.]" The lack of permanency caused John to be anxious and to feel insecure. He had a very strong attachment to his uncle and aunt.

### III. DISCUSSION

#### A. Beneficial Relationship Exception

The father contends he satisfied the beneficial relationship exception to parental rights termination, therefore it was error to terminate his parental rights. (§ 366.26, subd. (c)(1)(B)(i).) As amended effective January 1, 2009, section 366.26 provides in part: “(c)(1) If the court determines, based on the assessment provided . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . . A finding . . . that the court has continued to remove the child from the custody of the parent . . . and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights. Under these circumstances, the court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

At a section 366.26 hearing, the juvenile court is required to select and implement a permanent plan for the dependent child. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164; *In re Edward R.* (1993) 12 Cal.App.4th 116, 122; *In re Heather B.* (1992) 9 Cal.App.4th 535, 546.) Under section 366.26, subdivision (c)(1)(B)(i), a parent seeking to avoid termination of parental rights must show regular contact has been maintained with the child. Further, the parent must prove the child would benefit from continuing the parent-child relationship. The burden is on the parent to prove that termination of parental rights would be detrimental to the child. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The Court of Appeal has explained: “[T]he parent

must show more than frequent and loving contact or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]’ (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.) In determining whether the exception applies, the juvenile court should consider: the age of the child; the portion of the child's life spent in the parent's custody; the positive and negative interaction between the parent and the child; and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

We review the juvenile court's determination for substantial evidence. (*In re Amber M.*, *supra*, 103 Cal.App.4th at p. 689; *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 955.) As the Court of Appeal held in *L.Y.L.*: “The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.) We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re Autumn H.*, *supra*, 27 Cal.4th at p. 576.) The appellant has the burden of showing the finding or order is not supported by substantial evidence. ( *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)” (*In re L.Y.L.*, *supra*, 101 Cal .App.4th at p. 947.)

The juvenile court found the benefit of a permanent home outweighed any benefit the child might gain from a continued relationship with his father. Substantial evidence supports the juvenile court's ruling. There is no evidence John’s relationship with his father in his early years was anything but negative. The father was violent and abusive. As a result of the father’s anger and the violence John was exposed to, John manifested extreme anxiety and agitation. The father’s contact with John over the five years of the

dependency proceedings was inconsistent and only briefly and unsuccessfully progressed beyond monitored visitation. Although John wanted to see his father and generally enjoyed visiting with him, he sometimes resisted the visits and frequently requested they occur less often. The father did not occupy a parental role in the child's life. Moreover, John had a heightened need for permanency and stability. He displayed emotional and behavioral problems indicative of post traumatic stress disorder. He required a carefully maintained routine and focused assistance in order to function well.

### B. Sibling Relationship Exception

The father argues the juvenile court should have found the sibling relationship exception applied. Pursuant to section 366.26, subdivision (c)(1)(B), the juvenile court “shall terminate parental rights unless . . . [¶] . . . [¶] [it] finds a compelling reason for determining that termination would be detrimental to the child due to . . . [¶] . . . [¶] (v) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.” The purpose of this exception is to preserve sibling relationships that “serve as anchors for dependent children” whose lives have been uprooted by parental misbehavior or neglect. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404; accord, *In re Valerie A.* (2006) 139 Cal.App.4th 1519, 1523.) The juvenile court considers possible detriment to the child being considered for adoption, not detriment to the sibling. (*In re Celine R.* (2003) 31 Cal.4th 45, 54; *In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.)<sup>2</sup> The father had the burden of showing the existence of a significant sibling relationship, that termination of

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<sup>2</sup> Chelsea did not file a section 388, subdivision (d) petition to oppose adoption of her sibling. (See *In re Hector A.* (2005) 125 Cal.App.4th 783, 788-789, 790-796.)



parental rights would interfere with that relationship, and that it would be detrimental to John to terminate parental rights based on the sibling relationship exception. (*In re Erik P.*, *supra*, 104 Cal.App.4th at p. 401; *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.) If the father met that burden, the juvenile court was required to consider whether the benefit to John of continuing the sibling relationship outweighed the positive effect of a permanent adoptive home. (*In re Megan S.*, *supra*, 104 Cal.App.4th at p. 254; *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-953.) We review the juvenile court's finding for substantial evidence. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1019, disapproved on another point in *In re S.B.* (2009) 46 Cal.4th 529, 537, fn.5; *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 953.)

Substantial evidence supports the juvenile court's finding the sibling relationship exception did not apply. The children grew up together during the first four years of John's life, but never lived in the same household after they were detained. When both children were still living together, Chelsea physically abused John. As a result their bond, at least initially, was not strong. John was afraid of his half-sibling. And although the children appeared to benefit from visiting each other, the father played no part in the relationship. Instead, it was the prospective adoptive parents who maintained the contact between John and Chelsea. Continued contact with Chelsea did not outweigh John's urgent need for permanency and stability, a need he himself had repeatedly expressed. In any event, it appeared likely the prospective adoptive parents would continue John's visits with Chelsea.

### C. Adoptability

The father argues there was no substantial evidence John was likely to be adopted. The adoptability determination focuses on the child's age, physical condition, and emotional state, and whether those characteristics make it difficult to find prospective adoptive parents. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406; *In re Valerie W.* (2008) 162 Cal.App.4th 1, 13.) The juvenile court may only terminate parental rights based on clear

and convincing evidence of the likelihood the child will be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Zeth S.*, *supra*, 31 Cal.4th at p. 406; *In re Erik P.*, *supra*, 104 Cal.App.4th at p. 400.) The adoptability finding is reviewed for substantial evidence. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 79-80; *In re J.I.* (2003) 108 Cal.App.4th 903, 911.)

We find substantial evidence supported the juvenile court's finding the child was likely to be adopted. John, age 9, had no medical or developmental problems. His learning, behavioral and emotional problems were being addressed and had improved under the prospective adoptive parents' care. The prospective adoptive parents were relatives—the paternal uncle and his wife—who had cared for John for five years. Their home had been approved for adoption purposes. This was sufficient evidence John was likely to be adopted within a reasonable time.

#### D. Substantive Due Process

The father contends parental rights termination where adoption was actually contrary to the child's best interests violated the father's substantive due process rights. The father has not shown he raised this argument in the trial court. Nor does substantial evidence in the record compel a conclusion adoption was contrary to John's best interests. To the contrary, as discussed above, there was substantial evidence John had a grave need and an urgent desire for the permanency and stability of an adoptive home. He had suffered as a result of prolonged uncertainty whether he was to remain in his caretakers' home. The welfare of a child is a compelling state interest that justifies interference with a parent's interest in the care, custody and companionship of a child. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1370.)

#### E. Reunification Services

The father asserts the department failed to provide him with reasonable and adequate reunification services, and rebuffed and ignored his reunification efforts, and he was thus deprived of elementary fairness . This court has already found that the father received adequate and reasonable reunification services. (*D.G. v. Superior Court* (March 9, 2009, B212232) [nonpub. opn.].) That decision was on the merits. As a result, the father may not now challenge the provision of reunification services. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 764; *In re Julie S.* (1996) 48 Cal.App.4th 988, 989-990, 991; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2009) Appealability and Standing to Appeal, ¶ 2.164.10.)

#### IV. DISPOSITION

The parental rights termination order is affirmed.

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WEISMAN, J.\*

We concur:

ARMSTRONG, ACTING P.J.

MOSK, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.